

date of issuance of the first notice of intent to terminate and ending with the date of the last distribution; and

(iv) Neither the majority owner's election nor the spouse's consent is inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.22 Administration of plan during pendency of termination process.

(a) *In general.* A plan administrator may distribute plan assets in connection with the termination of the plan only in accordance with the provisions of this part. From the first day the plan administrator issues a notice of intent to terminate to the last day of the PBGC's review period under § 4041.26(a), the plan administrator must continue to carry out the normal operations of the plan. During that time period, except as provided in paragraph (b) of this section, the plan administrator may not—

(1) Purchase irrevocable commitments to provide any plan benefits; or

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than an annuity.

(b) *Exception.* The plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments or in a form other than an annuity if—

(1) The participant has separated from active employment or is otherwise permitted under the Code to receive the distribution;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits.

§ 4041.23 Notice of intent to terminate.

(a) *Notice requirement.* (1) *In general.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator must issue a notice of intent to terminate to each person (other than the PBGC) that is an affected party as of the proposed termination date. In the case of a beneficiary of a deceased participant or an alternate payee, the plan admin-

istrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the distribution date.

(2) *Early issuance of NOIT.* The PBGC may consider a notice of intent to terminate to be timely under paragraph (a)(1) of this section if the notice was early by a *de minimis* number of days and the PBGC finds that the early issuance was the result of administrative error.

(b) *Contents of notice.* The PBGC's standard termination forms and instructions package includes a model notice of intent to terminate. The notice of intent to terminate must include —

(1) *Identifying information.* The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(2) *Intent to terminate plan.* A statement that the plan administrator intends to terminate the plan in a standard termination as of a specified proposed termination date and will notify the affected party if the proposed termination date is changed to a later date or if the termination does not occur;

(3) *Sufficiency requirement.* A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all plan benefits under the plan;

(4) *Cessation of accruals.* A statement (as applicable) that—

(i) Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;

(ii) A plan amendment has been adopted under which benefit accruals will cease, in accordance with section 204(h) of ERISA, as of the proposed termination date or a specified date before the proposed termination date, whether or not the plan is terminated; or

(iii) Benefit accruals ceased, in accordance with section 204(h) of ERISA, as of a specified date before the notice of intent to terminate was issued;